STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER D. BENTFIELD,

Plaintiff-Appellant,

v

BRANDON'S LANDING BOAT BAR, DAVID WATTS, INC., and DAVID WATTS,

Defendants-Appellees.

UNPUBLISHED
August 31, 2004

No. 248795
Oakland Circuit Court
LC No. 02-039613-NO

Before: Jansen, P.J., and Meter and Cooper, JJ.

METER, J. (*concurring in part and dissenting in part*).

I concur in parts I and II of the majority's opinion but dissent from part III. I would affirm this case in its entirety.

Plaintiff contends that the open and obvious doctrine could not be used as a defense in this case because MCL 554.139 applied. See *Woodbury v Bruckner*, 467 Mich 922, 922; 658 NW2d 482 (2002) ("[t]he open and obvious doctrine cannot be used to avoid a specific statutory duty"). This statute states, in part, that a lessor covenants "[t]hat the premises and all common areas are fit for the use intended by the parties" and also covenants "[t]o keep the premises in reasonable repair during the term of the lease . . . ." MCL 554.139(1).

Plaintiff is not entitled to reversal with respect to this issue. Indeed, he failed to preserve the issue concerning MCL 554.139 because he did not mention the statute, with its corresponding inapplicability of the open and obvious defense, during the summary disposition proceedings, despite the fact that the *Woodbury* decision was released before plaintiff filed his brief in response to defendants' motion for summary disposition. See, generally, *Charbeneau v Wayne County Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). He raised the issue only in a motion for rehearing and reconsideration. As noted in MCR 2.119(F)(3), to be entitled to relief with respect to a motion for rehearing or reconsideration, "[t]he moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." Here, no palpable error occurred, because plaintiff *did not even allege* a violation of MCL 554.139 until he filed his

motion for rehearing and reconsideration. See *Charbeneau, supra* at 733 ("[w]e find no abuse of discretion in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court's original order"). Appellate relief is unwarranted.[1]

I would affirm.

/s/ Patrick M. Meter

[1] While the trial court mentioned alternative grounds for its ruling denying the motion for rehearing and reconsideration, I note that this Court does not reverse when the trial court reaches the correct result for the wrong reasons. See *Ford Motor Credit Co v Detroit*, 254 Mich App 626, 633-634; 658 NW2d 180 (2003).